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APPLICATION NO. FIRST NAMED INVENTOR FILING DATE ATTORNEY DOCKET NO. CONFIRMATION NO. 09/955,315 09/19/2001 32301 WD227 **Brigitte Bathe** 8177 01/09/2004 **EXAMINER** SMITH, GAMBRELL & RUSSELL, LLP KERR, KATHLEEN M ATTORNEYS AT LAW ART UNIT PAPER NUMBER **SUITE 800** 1850 M STREET, N.W. 1652

DATE MAILED: 01/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary    Examiner				Application No.	Applicant(s)		
Rathleen M Kerr  The MAILING DATE of this communication appears on the cover sheet with the correspondence address Period for Reply  A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.  The MAILING DATE OF THIS COMMUNICATION.  If the period for reply specified above is less than thirty (03) days, a reply within the statikary minimum of thirty (30) days will be considered timely.  If the period for reply specified above is less than thirty (03) days, a reply within the statikary minimum of thirty (30) days will be considered timely.  If the period for reply specified above is less than thirty (03) days, a reply within the statikary minimum of thirty (30) days will be considered timely.  If the period for reply specified above is less than thirty (03) days, a reply within the statikary minimum of thirty (30) days will be considered timely.  If the period for reply specified above is the statikary period will apply and it segres (30) (MONTHS from the mailing date of this communication.  If the period for reply specified above is the statikary period will apply and it segres (30) (MONTHS from the mailing date of this communication.  Any may's reviewed by the Office steer than thins months after the mailing date of this communication.  Status  Status  I) Responsive to communication(s) filled on OT January 2004.  2a This action is FINAL. 2b) This action is non-final.  3) Is action is FINAL. 2b) This action is non-final.  3) Is action is accordance with the practice under Experfe Quarle, 1935 C.D. 11, 453 O.G. 213.  Disposition of Claims  4) Claim(s) 1-29 is/are pending in the application.  4a) Of the above claim(s) is/are withdrawn from consideration.  5] Claim(s) is/are allowed.  Claim(s) 1-29 are subject to restriction and/or election requirement.  Application Papers  9) The specification is objected to by the Examiner.  10) The drawing(s) field on is/are withdrawn from consideration.  11) Find the properties of the properties of the properties of the p	Office Action Summary			09/955,315	BATHE ET AL.		
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U.S. Patent and Trademark Office PTOL-326 (Rev. 11-03) Application/Control Number: 09/955,315

Art Unit: 1652

### **DETAILED ACTION**

## **Application Status**

1. Claims 1-29 are pending in the instant application

#### Restriction

- 2. Restriction to one of the following inventions is required under 35 U.S.C. § 121:
  - I. Claims 1-12 and 27, drawn to polynucleotides coding for the dps gene which encodes a DNA protection protein activity, vectors and host cells thereof, classified in class 536, subclass 23.1.
  - II. Claims 13-26, drawn to methods of making L-amino acids, classified in class 435, subclass 106.
  - III. Claims 28-29, drawn to methods for isolating nucleic acids related to the dpsgene, classified in class 435, subclass 6.
- 3. The inventions are distinct, each from the other because of the following reasons:

Group I is related to Groups II and III as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (M.P.E.P. § 806.05(h)). In the instant case, the polynucleotides can be used for a materially different process of using that product, such as in the recombinant production of the encoded enzyme. Thus,

Art Unit: 1652

Group I is patentably distinct from Group II and III. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

Groups II and III are related as processes using the same polynucleotides. However, the Groups are distinct because they require distinct method steps using distinct reagents to produce distinct products. Moreover, these distinct methods are not disclosed as being used together. Thus, Groups II and III are patentably distinct. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

## Notice of Possible Rejoinder

4. The Examiner notes that if product claims in Group I are found directed to an allowable product, then process claims in Groups II and III, which are directed to processes of using the patentable product, previously withdrawn from consideration as a result of a restriction requirement, would now be rejoined pursuant to the procedures set forth in the Official Gazette notice dated March 26, 1996 (1184 O.G. 86; see also M.P.E.P. § 821.04, *In re* Ochiai, and *In re* Brouwer). Since process claims would be rejoined and fully examined for patentability under 37 C.F.R. § 1.104, Applicants are instructed to amend said claims as deemed necessary according to rejections made against the elected claims.

Art Unit: 1652

#### Election

5. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 C.F.R. § 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 C.F.R. § 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 C.F.R. § 1.48(b) and by the fee required under 37 C.F.R. § 1.17(i).

#### Conclusion

6. A complete response to the instant Office action must include an election of invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kathleen M Kerr whose telephone number is (703) 305-1229. The examiner can normally be reached on Monday through Friday, from 9:00am to 6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ponnathupura Achutamurthy can be reached on (703) 308-3804. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

Kathleen M Kerr

Examiner

Art Unit 1652